# JUDGMENT OF THE COURT (Second Chamber)
16 October 2003 *

In Case C-388/02,

**Commission of the European Communities,** represented by M. Patakia and K. Banks, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Ireland,** represented by D. O'Hagan, acting as Agent, and A. Collins, Barrister, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (OJ 1999 L 201, p. 77), or in any event by failing to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under that directive,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 By application lodged at the Court Registry on 4 November 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directive on liberalisation and transitional measure and supplementing the general systems for the recognition of qualifications (OJ 1999 L 201, p. 77) ('the Directive'), or in any event by failing to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under that directive.

### The legal framework and pre-litigation procedure

2 Article 14 of the Directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive before 31 July 2001. They shall immediately inform the Commission thereof.

...

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this directive.'

3 Taking the view that Directive 1999/42 had not been incorporated into Irish law within the prescribed period, the Commission initiated the procedure in respect of failure to fulfil Treaty obligations. After giving Ireland formal notice to submit its observations, the Commission, on 15 April 2002, issued a reasoned opinion calling on Ireland to adopt the measures necessary to comply with the reasoned opinion within a period of two months from the date of notification. Since Ireland did not reply to that opinion, the Commission brought the present proceedings.

## The action

*Arguments of the Irish Government*

4 The Irish Government accepts that when the period laid down in the reasoned opinion expired it had not adopted the laws, regulations and administrative provisions necessary to comply with the Directive.

5 The implementation of the Directive in Ireland has been delayed owing to the relative complexity of the process involved. Prior to adopting the necessary measures, the principal government department responsible for the transposition of the Directive, the Ministry of Education and Science, contacted all of the other government departments responsible for the matters governed by the directives listed in Annex B to the Directive, which were repealed by virtue of Article 11(1) thereof. It has now been established that the activities referred to in those directives are not regulated in Ireland. The transposition of the Directive thus relates principally to the introduction of a mechanism for the production of proof that the conditions laid down in Article 4 have been satisfied, as required by Article 8 of the Directive. Discussions are currently underway with the Department of Enterprise, Trade and Employment, which is the government department responsible for the coordination of issues relating to the internal market.

*Findings of the Court*

6 It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion (see, *inter alia*, Case C-71/99 *Commission* v *Germany* [2001] ECR I-5811, paragraph 29; and Case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13.

7 In the present case, it is not disputed that the Directive was not transposed within the period prescribed by the reasoned opinion.

8 Furthermore, the Court has repeatedly held that a Member State may not rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period (see, in particular, Case C-352/01 *Commission* v *Spain* [2002] ECR I-10263, paragraph 8).

9 The action brought by the Commission must therefore be considered to be well founded.

10 It must therefore be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive, Ireland has failed to fulfil its obligations under that directive.

## Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against Ireland and the latter has been unsuccessful, Ireland must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications, Ireland has failed to fulfil its obligations under that directive;**

2. **Orders Ireland to pay the costs.**

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass
Registrar

V. Skouris
President